no provision for the disposition of a surplus remaining after all debts of the bankrupt are paid in full. Therefore, as to such a surplus, the court is remitted to ordinary equitable principles, and it is equitable that the bankrupt should get the surplus only after the trustee has paid the creditors the interest on their claims up to the date of payment. A similar result was reached under the Act of 1867, under a former English act, and under several state insolvency laws. *In re Hagan*, Fed. Cas., No. 5898; *Bromley* v. *Goodere*, 1 Atk. 75; *Williams* v. *American Bank*, 45 Mass. 317. In the only other case involving the distribution of a surplus under the present act, this point seems to have been assumed. *Re Osborn's Sons & Co.*, 177 Fed. 184.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — DUTY TO PROTECT FROM ARREST. — The plaintiff was a passenger in a sleeping car on the defendant's train. Public officers, having information that a person suspected of having committed murder in Indiana was in the berth occupied by the plaintiff, boarded the train in New York, and showed their police badges to the conductor, who pointed out the plaintiff's berth. The plaintiff was arrested without a warrant and removed from the train, but was released the following day. *Held*, that the defendant is not liable. *Burton* v. *New York, etc. R. Co.*, 46 N. Y. L. J. 1287 (N. Y., App. Div., Dec., 1911).

Although the carrier is bound legally to use the highest degree of care practicable to protect passengers, it is not an insurer of their safety. *Boyce* v. *Anderson*, 2 Pet. (U. S.) 150; *Wright* v. *Chicago, B. & Q. R. Co.*, 4 Colo. App. 102, 35 Pac. 196. The majority opinion in the principal case, proceeding on the ground that the arrest was valid, coincides with settled law that the carrier owes no duty to interfere with the lawful arrest of a passenger. See *Brunswick & Western R. Co.* v. *Pouder*, 117 Ga. 63, 43 S. E. 430, 431. It would seem that the carrier owes no greater duty of protection from unlawful arrest by officers having apparent authority. See *Duggan* v. *Baltimore & Ohio R.*, 159 Pa. St. 248, 255, 28 Atl. 182, 185. The carrier is not negligent in submitting to the demands of officers whose duty it is to enforce the laws. *Mayfield* v. *St. Louis, I. M. & S. Ry. Co.*, 97 Ark. 24, 133 S. W. 168. See 2 HUTCHINSON, CARRIERS, 3 ed., § 987. To hold otherwise would impose upon the carrier the precarious duty of passing on the right of a legal officer to make an arrest. *Bowden* v. *Atlantic Coast Line R. Co.*, 144 N. C. 28, 56 S. E. 558. The argument of the dissenting judge is based partly on the analogy of attachment of goods in the hands of the carrier, who is protected only if the process is valid. *Edwards* v. *White Line Transit Co.*, 104 Mass. 159. It is submitted that this ignores the distinction between the liability of the carrier of goods and that of the carrier of passengers.

CONFLICT OF LAWS — SITUS OF CHOSES IN ACTION — ATTACHMENT OF STOCK CERTIFICATES. — The plaintiff brought an action in Kentucky and recovered judgment against the defendant A., a resident of New York. The plaintiff, in proceedings under a Kentucky statute, served a writ of attachment on the defendant B., a Delaware corporation having its principal office, its books, its plant, and all its assets in Kentucky. The attachment covered a certificate for stock transferred to B. by A. in fraud of creditors, and also stock, the certificate for which A. himself held in New York. *Held*, that the attachment is valid as to all the shares. *Bowman* v. *Breyfogle*, 140 S. W. 694 (Ky.).

As a corporation exists only at its domicile, its stock should be attachable there alone, irrespective of the location of the certificates. *Ireland* v. *Globe Milling and Reduction Co.*, 19 R. I. 180, 32 Atl. 921; *Christmas* v. *Biddle*, 13 Pa. St. 223; *Smith* v. *Downey*, 8 Ind. App. 179. Two courts, however, hold the contrary view, considering that stock certificates are now generally treated

as personal property. *Simpson* v. *Jersey City Contracting Co.*, 165 N. Y. 193, 58 N. E. 896; *Puget Sound National Bank* v. *Mather*, 60 Minn. 362, 62 N. W. 396. But this obscures the fundamental distinction between the property in the certificate itself and the interest in the corporation represented by it. *Moore* v. *Gennett*, 2 Tenn. Ch. 375. See 25 HARV. L. REV. 74. As to the New York shares the court held that the defendant corporation had become domesticated, thus making Kentucky the *situs* of its stock — a conclusion supported by one case in which statutes required the corporation to undergo certain domesticating processes before entering the state. *Young* v. *South Tredegar Iron Co.*, 85 Tenn. 189, 2 S. W. 202. The Kentucky provision that "stock in a corporation" is attachable hardly justifies this result, and similar provisions under almost identical circumstances have been held to cover only domestic corporations. *Plimpton* v. *Bigelow*, 93 N. Y. 592, reversing 29 Hun (N. Y.) 362; *Ireland* v. *Globe Milling and Reduction Co.*, *supra*. And although there appears no inherent prohibition on legislative enactment making the possibility of such attachment a condition precedent to the corporation's entering the jurisdiction, it is submitted that for reasons of comity and justice the court should construe this as covering only the property in the certificate itself.

CONTRIBUTORY NEGLIGENCE — STATUTORY ACTIONS — INTENT OF STATUTE TO ABROGATE DEFENSE. — A statute required railroads to erect cattle guards and provided that the railroad should be liable civilly for any injury to cattle or stock resulting from a failure to comply with the statute. *Held*, that contributory negligence is no defense to an action on the statute. *Chapin* v. *Ann Arbor R. Co.*, 133 N. W. 512 (Mich.).

A statute made it illegal to sell oil under 105° Fahrenheit test and provided that anyone violating the statute should be liable civilly for any injury caused by an explosion thereof. *Held*, that contributory negligence is a bar to recovery. *Morrison* v. *Lee*, 133 N. W. 548 (N. D.). See NOTES, p. 463.

CORPORATIONS — CORPORATIONS DE FACTO — LIABILITY OF DIRECTORS AS PARTNERS. — The plaintiff sold goods to the F. J. Pound Company, not knowing whether the company was a corporation or a partnership. The company had attempted incorporation but had failed because it had not filed articles of association with the county clerk. *Held*, that the plaintiff cannot recover from the directors as copartners. *Newcomb-Endicott Co.* v. *Fee*, 133 N. W. 540 (Mich.).

The principal case falls midway between two well-established cases. (1) Where one sells goods to a *de facto* corporation, reasonably believing it to be a partnership, he can hold the incorporators to an individual liability. *Guckert* v. *Hacke*, 159 Pa. St. 303, 28 Atl. 249. *Cf. Rust-Owen Lumber Co.* v. *Wellman*, 10 S. D. 122, 72 N. W. 89. (2) Where there has been dealing on a corporate basis with a *de facto* corporation, collateral attack will be denied. *Snider's Sons Co.* v. *Troy*, 91 Ala. 224, 8 So. 658. *Cf. Whitney* v. *Wyman*, 101 U. S. 392, 397. There is said to be a presumption of dealing on a corporate basis when a "corporate-sounding name" is used. *Allen* v. *Hopkins*, 62 Kan. 175, 61 Pac. 750. *Cf. Seymour* v. *Harrow Co.*, 81 Ala. 250, 1 So. 45. It is doubtful whether this presumption is warranted in all cases, since partnerships and even individuals lawfully may, and often do, use such names in business transactions. *Anderson* v. *Walsh*, 189 N. Y. 159, 81 N. E. 764. See LINDLEY, PARTNERSHIP, 7 ed., 107. The better rule would seem to be that where, as in the principal case, a seller does not consider whether he is dealing with a corporation or a partnership, the associates in order to escape individual liability should make out *de jure* incorporation. There is no argument *ad hominem* or reason of policy for confining the seller to an action against the *de facto* corporation. See 20 HARV. L. REV. 456, 471–474.